

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LIANG CHEN, DONALD OLGADO, WEI-
YUNG HSU, and ROBERT EWALD,

Defendants.

Case No. 17-cr-00603-BLF

**OMNIBUS ORDER REGARDING
PENDING ADMINISTRATIVE
MOTIONS TO FILE UNDER SEAL**

[Re: ECF No. 388, 397, 427, 431, 443, 456]

Just after trial, the Court granted the Parties' stipulation to provisionally seal all admitted exhibits and transcripts of trial testimony until the Court resolved an upcoming motion to seal made by non-party Applied Materials, Inc. ECF No. 382. Now before the Court is that sealing request. ECF No. 388 ("AMFUS"); *see* ECF No. 427 ("ASupp."). Applied seeks to seal 78 admitted trial exhibits (in whole or in part) and 7 lines of the trial transcript. AMFUS at 1. Defendants Liang Chen, Donald Olgado, Wei-Yung Hsu, and Robert Ewald ("Defendants") jointly oppose Applied's request, save for five admitted exhibits. ECF No. 397 ("Opp."); *see also* ECF No. 431 ("DSupp."). The Government filed a short statement in support of Applied's request. ECF No. 399 ("Gov't Stmt."). For the reasons stated below, the Court GRANTS the motions to seal.

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, filings that are "more than tangentially related to the merits of a case" may be sealed only upon a showing of "compelling reasons" for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only

1 tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at
 2 1097. Trial records, of course, are “more than tangentially related to the merits of a case” and are
 3 thus subject to the “compelling reasons” standard. *See In re Elec. Arts, Inc.*, 298 F. App’x 568,
 4 569 (9th Cir. 2008); *United States v. Carpenter*, 923 F.3d 1172, 1178–79 (9th Cir. 2019).

5 The trial materials that Applied seeks to maintain under seal fall broadly into three
 6 categories. The Court considers each category in turn and concludes that each category of
 7 materials should be maintained under seal.

8 Trade Secret Materials & Related Confidential Information. Applied seeks the sealing of
 9 66 trial exhibits (TRX 2, 7–8, 10–40, 43–45, 48–49, 58–59, 69–70, 97, 104, 110A, 145B, 167,
 10 181, 257, 293, 299, 527, 565–566, 570–575, 1048, 1053, 1123A, 2043, and 2043A) that it says
 11 contain or depict Applied’s confidential 2D blueprint drawings and 3D models for Applied
 12 components, BOMs, and recipes related to the NLighten tool. *See* AMFUS at 2–4. Applied says
 13 that the materials “are all trade secrets at issue in this case and in Applied’s pending civil case
 14 against Defendants.” *Id.* at 2. In its supplemental brief, Applied says that there is still a present
 15 day need to seal this information because it is “important to maintaining Applied’s competitive
 16 advantage in its core silicon epitaxy business.” ASupp. at 3–4. Defendants oppose sealing most
 17 of this information, saying that the materials were not trade secrets in 2012 or today. Opp. at 1–4.

18 The Court finds that there are “compelling reasons” to seal this information. Trade secret
 19 materials meet the “compelling reasons” standard for sealing because “the common-law right of
 20 inspection has bowed before the power of a court to [e]nsure that its records are not used . . . as
 21 sources of business information that might harm a litigant’s competitive standing.” *In re Elec.*
 22 *Arts, Inc.*, 298 F. App’x at 569 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
 23 (1978)). In light of the Court’s order on the motions for reconsideration, the Court has found that
 24 there was sufficient evidence for a reasonable juror to conclude beyond a reasonable doubt that the
 25 charged trade secrets underlying counts 2–12 were in fact trade secrets in 2012—a higher
 26 evidentiary standard than the “compelling reasons” Applied must provide for sealing these
 27 materials. *See* ECF No. 459.

28 The Court finds that, in light of the supplementary materials, Applied has also met its

burden to show that even today, disclosure of this information would harm its competitive standing, notwithstanding the age of the materials. *See Kamakana*, 447 F.3d at 1182 (affirming denial of sealing “years old” records due to absence of showing of present harm from disclosure). Regardless of whether the charged trade secrets retain their trade secret status today, Applied has established that all of the exhibits it seeks to seal in this category could serve as “sources of business information that might harm [Applied’s] competitive standing” such that compelling reasons support sealing those exhibits. *In re Elec. Arts, Inc.*, 298 F. App’x at 569. On this account, Applied has submitted multiple sworn declarations stating that disclosure of these materials would undermine Applied’s competitive advantage in its core silicon epitaxy business. First, Applied says that the CAD drawings and BOMs for the NLighten tool remain valuable for Applied because they are “similar or identical to components on other Applied products that Applied continues to sell and service.” ECF No. 427-2 (“Burrows 2/4 Decl.”) ¶ 7. Second, Applied refers back to these materials when it begins new work on epitaxy projects, and it cites specific tools that it is developing that rely on these NLighten materials. *Id.* ¶¶ 7–8; *see also* ECF No. 427-3 (“Ramamurthy 2/7 Decl.”) ¶ 9 (discussing development of next generation silicon epitaxy tools). Finally, Applied states that disclosure of the materials would benefit Applied’s competitors in the silicon epitaxy space by allowing them to obtain an advantage in developing or refining their MOCVD technology. *See* Burrows 2/4 Decl. ¶ 7; Ramamurthy 2/7 Decl. ¶¶ 8–9. The Court finds unpersuasive Defendants’ arguments that Applied has not been sufficiently specific about its requests. *See* DSupp. at 1–3. The Court will not require Applied to provide separate argument exhibit-by-exhibit to justify sealing when Applied has provided case law and argument for categories of materials and descriptions for each exhibit (or portion of exhibit) and line of trial transcript it seeks to seal.

Customer and Supplier Contracts and Information. Applied seeks to seal ten trial exhibits (TRX 72, 85, 110A, 257, 293, 1048, 3085, 3086, 3088, and 3113) and seven lines of the trial transcript (Trial Tr. 482:1, 490:1, 490:18, 2439:14, 2973:15, 2973:17, and 2973:25) because these materials discuss confidential contracts, terms, and/or requests between Applied and its customers and suppliers of the MOCVD technology. *See* AMFUS at 4; ASupp. at 4–5. Other than

arguments the Court has rejected in other contexts (including its January 6 Order and its order on the motions for reconsideration), Defendants object to sealing some of this information again based on its age.

There are compelling reasons to seal this information. There are “compelling reasons” to seal documents containing proprietary business information, including pricing and other negotiated terms, especially in agreements with customers. *See In re Elec. Arts, Inc.*, 298 F. App’x at 569–70 (sealing portion of license agreements); *Nicolosi Distrib., Inc. v. Finishmaster, Inc.*, 2018 WL 10758114, at *3 (N.D. Cal. Aug. 28, 2018) (sealing customer agreements).

Applied’s declarations establish compelling reasons to seal this information, even today. First, it says that competitors or potential customers would be able to derive its pricing and sales volumes from these exhibits, potentially undermining Applied’s negotiating position. ECF No. 388-10 (“Tanaka 8/27 Decl.”) ¶¶ 7, 18; ECF No. 388-7 (“Giese 8/27 Decl.”) ¶ 16; ECF No. 388-9 (“Kuppurao 8/27 Decl.”) ¶ 6. Second, Applied says that it is contractually obligated to seek sealing of its agreements with certain customers and confidential customer data contained in certain presentations. *See Tanaka 8/27 Decl.* ¶¶ 4–5. Finally, Applied says that disclosure of even prior pricing is harmful because others in the industry can use it to approximate today’s pricing on related epitaxy technologies. *Id.* ¶ 7. These reasons are sufficient to meet the “compelling reasons” standard.

Internal Analysis of Applied and Analysis Licensed by Applied. Finally, Applied seeks to seal 14 trial exhibits (TRX 110A, 167, 181, 257, 282, 1051, 1053, 1123A, 2021, 2021A, 2034, 2034A, 2043, and 2043A) because those exhibits contain internal competitive analyses conducted by Applied and analysis licensed from third-party IMS research. *See AMFUS* at 5; *ASupp.* at 4–5. Again, other than arguments the Court has previously rejected, Defendants oppose most of the request based on the age of the materials.

Courts seal marketing strategies and internal competitive analyses because the materials could be used by competitors to obtain an unfair advantage in developing and marketing their own similar tools. *See Algarin v. Maybelline, LLC*, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014). Applied has submitted declarations establishing that its internal analyses are proprietary and

continue to be applied in analyzing present-day products. *See* Ramamurthy 2/7 Decl. ¶ 10; Tanaka 8/27 Decl. ¶¶ 16–18 & tbl. A. These are thus compelling reasons to seal this information.

For the foregoing reasons:

- Applied’s administrative motion to file under seal (ECF No. 388) is GRANTED. The materials identified in the Appendix to this Order SHALL remain under seal. All other admitted exhibits and portions of trial transcripts not covered by this Order are UNSEALED.
- The administrative motions to file under seal materials submitted with the motions for reconsideration (ECF Nos. 443, 456) are also GRANTED because those materials are identical to materials listed above.
- The administrative motions to file under seal briefs and materials related to Applied’s motion (ECF Nos. 388, 397, 427, 431, 443, 456) are GRANTED. Those briefs and materials SHALL remain under seal because they refer to sealed information.
- For trial exhibits and trial transcripts with partial redactions only, Applied SHALL file and submit to chambers copies of the redacted materials **no later than 30 days after this Order.**

IT IS SO ORDERED.

Dated: July 14, 2022


 BETH LABSON FREEMAN
 United States District Judge

APPENDIX

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 2	11 DVDs Produced by Donald Olgado	Entirety
TRX 7	“Applied_TC3-0348882_BOM_3D” spreadsheet	Entirety (PDF and native file)
TRX 8	“TC3-0348882_BOM_3D” spreadsheet	Entirety (PDF and native file)
TRX 10	2-D View of CAD Drawing for Count 2: TC2-0875534 / 0041-29695 (weldment outrigger)	Entirety
TRX 11	2-D View of CAD Drawing for Count 3: TC2-0882262 / 0021-60931 (window robot display)	Entirety
TRX 12	2-D View of CAD Drawing for Count 4: TC1-0488531 / 0041-13266 (Gas distribution assembly for showerhead)	Entirety
TRX 13	2-D View of CAD Drawing for Count 5: TC1-0546328 / 0041-25899 (deflector)	Entirety
TRX 14	2-D View of CAD Drawing for Count 6: TC1-0429737 / 0021-41978 (bearing, rotating reflector)	Entirety
TRX 15	2-D View of CAD Drawing for Count 7: TC2-0754970 / 0041-13601 (bearing support, lower lamp)	Entirety
TRX 16	2-D View of CAD Drawing for Count 8: TC3-0402521 / 0195-07483 (carrier pallet assembly)	Entirety
TRX 17	2-D View of CAD Drawing for Count 9: TC3-0256429 / 0050-98820 (interconnect for hydride pallet)	Entirety
TRX 18	2-D View of CAD Drawing for Count 10: TC3-0402584 / 0195-07485 (hydride pallet assembly)	Entirety
TRX 19	2-D View of CAD Drawing for Count 11: TC1-0248933 / 0040-39010 (manifold CFW mainframe block)	Entirety

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 20	2-D View of CAD Drawing for Count 12: TC2-0130472 / 0040-03883 (blank off)	Entirety
TRX 21	2-D View of CAD Drawing for Count 1: TC2-0794687 / 0041-26905 (360MM MULTI GAS SHOWERHEAD PATTERN II)	Entirety
TRX 22	2-D View of CAD Drawing for Count 1: TC1-0536580 / 0041-25197 (BASEPLATE, 350MM CHAMBER, NEON)	Entirety
TRX 23	2-D View of CAD Drawing for Count 1: TC3-0420559 / 0200-08476 (CARRIER, 7X 101, 180UM, AIR GAP, 2.1MM THK)	Entirety
TRX 24	2-D View of CAD Drawing for Count 1: TC3-0450707 / 0200-08740 (SUSCEPTOR, CONCAVE RELIEF, SIC, 350MM, NIGHTEN)	Entirety
TRX 25	2-D View of CAD Drawing for Count 1: TC2-0707970 / 0200-89004 (DOME, LOWER, EPI/HTF 300MM)	Entirety
TRX 26	2-D View of CAD Drawing for Count 1: TC1-0502693 / 0200-07215 (SUPPORT SHAFT, SUSCEPTOR, 3 ARM, NO CENTER PIN, 350MM, NEON)	Entirety
TRX 27	2-D View of CAD Drawing for Count 1: TC2-0783338 / 0200-07563 (UPPER LINER, DUAL EXHAUST, 4 PORT LINER PURGE, MOCVD, NEON)	Entirety
TRX 28	3-D View of CAD Drawing for Count 2: TC2-0875534 / 0041-29695 (weldment outrigger)	Entirety
TRX 29	3-D View of CAD Drawing for Count 3: TC2-0882262 / 0021-60931 (window robot display)	Entirety

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 30	3-D View of CAD Drawing for Count 4: TC1-0488531 / 0041-13266 (Gas distribution assembly for showerhead)	Entirety
TRX 31	3-D View of CAD Drawing for Count 5: TC1-0546328 / 0041-25899 (deflector)	Entirety
TRX 32	3-D View of CAD Drawing for Count 6: TC1-0429737 / 0021-41978 (bearing, rotating reflector)	Entirety
TRX 33	3-D View of CAD Drawing for Count 7: TC2-0754970 / 0041-13601 (bearing support, lower lamp)	Entirety
TRX 34	3-D View of CAD Drawing for Count 8: TC3-0402521 / 0195-07483 (carrier pallet assembly)	Entirety
TRX 35	3-D View of CAD Drawing for Count 9: TC3-0256429 / 0050-98820 (interconnect for hydride pallet)	Entirety
TRX 36	3-D View of CAD Drawing for Count 10: TC3-0402584 / 0195-07485 (hydride pallet assembly)	Entirety
TRX 37	3-D View of CAD Drawing for Count 11: TC1-0248933 / 0040-39010 (manifold CFW mainframe block)	Entirety
TRX 38	3-D View of CAD Drawing for Count 12: TC2-0130472 / 0040-03883 (blank off)	Entirety
TRX 39	3-D View of CAD Drawing for Count 1: TC2-0794687 / 0041-26905 (360MM MULTI GAS SHOWERHEAD PATTERN II)	Entirety
TRX 40	3-D View of CAD Drawing for Count 1: TC1-0536580 / 0041-25197 (BASEPLATE, 350MM CHAMBER, NEON)	Entirety
TRX 43	3-D View of CAD Drawing for Count 1: TC2-0707970 / 0200-89004 (DOME, LOWER, EPI/HTF 300MM)	Entirety

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 44	3-D View of CAD Drawing for Count 1: TC1-0502693 / 0200-07215 (SUPPORT SHAFT, SUSCEPTOR, 3 ARM, NO CENTER PIN, 350MM, NEON)	Entirety
TRX 45	3-D View of CAD Drawing for Count 1: TC2-0783338 / 0200-07563 (UPPER LINER, DUAL EXHAUST, 4 PORT LINER PURGE, MOCVD, NEON)	Entirety
TRX 48	Video Showing 3-D View of CAD Drawing for Count 4: TC1-0488531 / 0041-13266 (Gas distribution assembly for showerhead)	Entirety
TRX 49	Video Showing 3-D View of CAD Drawing for Count 5: TC1-0546328 / 0041-25899 (deflector)	Entirety
TRX 58	Video Showing 3-D View of CAD Drawing for Count 1: TC2-0707970	Entirety
TRX 59	Video Showing 3-D View of CAD Drawing for Count 1: TC1-0502693 / 0200-07215 (SUPPORT SHAFT, SUSCEPTOR, 3 ARM, NO CENTER PIN, 350MM, NEON)	Entirety
TRX 69	Epi lower quartz dome 01-20-21.pdf	Entirety
TRX 70	Epi-MOCVD Discussions 01-15-2021.pdf	Entirety
TRX 72	Email chain between Wei-Yung Hsu and Liang Chen last dated May 5, 2011	Highlighted portions
TRX 85	Global Supply Agreement between Applied and Nikkoshi Co, Ltd.	Highlighted portions at Paragraphs 3(c), 3(f), 4(f), 5(b), 8(a), 8(c), 12(a), 12(e), 12(f), 12(h), 17(a), 18(a), 20(a), 20(f), 25
TRX 97	Slides labeled “The NewCo Difference (LED)” and “The NewCo Difference (Power Electronics)”	Ex. 97 at 0002-0003

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 104	Copy of three 3D models	Highlighted portions at Ex. 104 at 0001-0002
TRX 110A	Presentation titled "MOCVD High Value Problem and Competitive Assessment" and dated July 2012	Ex. 110A at 000005-000006, 000020, 000022, 000025
TRX 145B	Email from Donald Olgado to James Herauf dated November 9, 2012	Highlighted portions at Ex. 145B at 0002
TRX 167	Presentation titled "Envision: Enabling high growth solid state lighting LED & power electronics industries" and dated September 26, 2012	Ex. 167 at 0009-0010, 0035-0036
TRX 181	Presentation titled "Envision: Enabling high growth solid state lighting LED & power electronics industries" and dated September 26, 2012	Ex. 181 at 0025-0026, 0033-0034
TRX 257	Presentation titled "MOCVD High Value Problem and Competitive Assessment" and dated July 2012	Ex. 257 at 0006-0007, 0017, 0020, 0023
TRX 282	Presentation titled "Applied Centura® NLighten MOCVD System" and dated April 2012	Ex. 282 at 0004
TRX 293	Presentation titled "Applied Centura® NLighten MOCVD System" and dated April 2012	Ex. 293 at 0016, 0037, 0041, 0046, 0049, 0067-0069, 0071-0082
TRX 299	Email chain involving Wei-Yung Hsu and Robert Ewald last dated July 10, 2012	Ex. 299 at 0003-0006, 0008 (PDFs and native files)
TRX 527	Video Showing 3-D View of CAD Drawing for Count 8: TC-0402521 / 0195-07483 (carrier pallet)	Entirety
TRX 565	"Reference Master BOM 1.xls" spreadsheet	Entirety (PDF and native file)
TRX 566	"Extra BOM 2.xls" spreadsheet	Entirety (PDF and native file)
TRX 570	Screenshot from NX	Entirety
TRX 571	Screenshot from NX	Entirety
TRX 572	Images of 3D models	Entirety
TRX 573	Images of 3D models	Entirety
TRX 574	Images of 3D models	Entirety

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 575	Images of 3D models	Entirety
TRX 1048	Presentation titled “Applied Centura® NLighen MOCVD System” and dated April 2012	Ex. 1048 at 6-8, 10-21, 38, 59, 63, 68, 71
TRX 1051	Presentation titled “Applied Centura® NLighen MOCVD System” and dated April 2012. <i>According to Tr. 916:12-15, Ex. 1051 was admitted in evidence</i>	Ex. 1051 at 4
TRX 1503	Presentation titled “MOCVD High Value Problem and Competitive Assessment” and dated July 2012	Ex. 1053 at 6-7, 21, 22, 24
TRX 1123A	Presentation titled “Precise8 Technologies: Enabling high growth solid state lighting LED & power electronics industries” and dated December 3, 2012	Ex. 1123A at 13-14, 33-34
TRX 2021	Email chain between Liang Chen and Robert Ewald last dated June 29, 2012	Ex. 2021 at 66-377
TRX 2021A	Attachment to email chain between Liang Chen and Robert Ewald last dated June 29, 2012	Entirety
TRX 2034	Presentation titled “Business Proposal – A NewCo Startup ‘Enlighten’ to Enable High Growth Solid State Lighting LED & Power Electronics Industries”	Ex. 2034 at 31-32
TRX 2034A	Presentation titled “Business Proposal – A NewCo Startup ‘Enlighten’ to Enable High Growth Solid State Lighting LED & Power Electronics Industries”	Ex. 2034A at 30-31
TRX 2043	Presentation titled “Envision: Enabling high growth solid state lighting LED & power electronics industries” and dated September 26, 2012	Ex. 2043 at 10-11, 36-37

TRX or Trial Tr.	Description	Portion(s) to Seal
TRX 2043A	Presentation titled “Envision: Enabling high growth solid state lighting LED & power electronics industries” and dated September 26, 2012	Ex. 2043A at 9-10, 35-36
TRX 3085	Equipment Purchase and Sale Agreement between Applied and Hangzhou Silan Azure Co., Ltd. (“ Silan ”), dated May 20, 2011	Entirety
TRX 3086	Settlement and Amendment to Equipment Purchase and Sale Agreement between Applied and Silan, dated December 20, 2012	Entirety
TRX 3088	Email chain between Mike Splinter and John Antone last dated February 1, 2012	Highlighted portion at 3088-2
TRX 3113	Email chain involving Wei-Yung Hsu last dated October 25, 2012	Highlighted portion
Trial Tr. at 2439	Trial testimony of Satheesh Kuppurao	Highlighted portion at Tr. 2439:14
Trial Tr. at 2973	Trial testimony of Liang Chen	Highlighted portions at Tr. 2973:15, 2973:17, 2973:25
Trial Tr. at 482, 490	Trial testimony of Mark Pinto	Highlighted portions at Tr. 482:1, 490:1, 490:18